

1  
2  
3  
4  
5  
6  
7  
8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11 FRANK A. WALLMULLER,

12                   Plaintiff,

13                  v.

14 CASEY SALISBURY *et al.*,

15                   Defendants.

16                   No. 09-CV-5534BHS/JRC

17                   ORDER ON PENDING MOTIONS AND  
18                   ORDER DIRECTING DEFENDANTS TO  
19                  RE-SERVE DOCUMENTS ON  
20                  PLAINTIFF

21                  This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned

22                  Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local

23                  Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4. Before the court are four motions.

24                  The first motion is a motion for summary judgment filed by the defendants (Dkt. # 6).

25                  The motion for summary judgment was originally noted for November 27, 2009. Plaintiff sent

26                  a letter explaining that he could not respond because he had just been transferred from the

                Mason County Jail to the Washington Corrections Center (Dkt. # 10). On its own motion, the

                court entered an Order that extended the time for filing an answer and re-noted the motion for

                summary judgment for January 22, 2010 (Dkt. # 11).

                ORDER- 1

1 Plaintiff subsequently filed three motions. Plaintiff is trying to name and serve one of the  
2 John Doe defendants in the action. He has filed a motion to issue summons and a motion to  
3 substitute or change the name of a defendant (Dkt. # 12 and 13). Plaintiff has also filed a  
4 motion asking for appointment of counsel (Dkt # 14). Plaintiff filed a letter response to the  
5 motion for summary judgment, which was received on January 29, 2010. Plaintiff alleges that  
6 he was moved from the Mason County Jail to the Intensive Management Unit at the  
7 Washington Corrections Center Intensive Management Unit and is without his legal papers.  
8

9 All of plaintiff's pending motions are DENIED. The motion to substitute Tom Haugen  
10 for one of the John Does and the motion to issue a summons for Mr. Haugen are denied, without  
11 prejudice. Service of another defendant at this point in the case would further delay  
12 consideration of the motion for summary judgment. Naming Mr. Haugen does not appear to  
13 affect the issues raised in the summary judgment motion, so the court sees no reason to further  
14 delay consideration of that motion. If this case survives the pending motion for summary  
15 judgment, plaintiff may again raise the issue of naming this person as a defendant and serving  
16 him.

18 The motion for appointment of counsel is DENIED because there is no right to have  
19 counsel appointed in cases brought under 42 U.S.C. § 1983. Although the court can request  
20 counsel to represent a party, the court may do so only in exceptional circumstances. Wilborn v.  
21 Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Franklin v. Murphy, 745 F.2d 1221, 1236 (9th  
22 Cir. 1984); Aldabe v. Aldabe, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional  
23 circumstances requires an evaluation of both the likelihood of success on the merits and the  
24 ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues  
25 involved. Wilborn, 789 F.2d at 1331.

ORDER- 2

1 Plaintiff has demonstrated an adequate ability to articulate his claims pro se (Dkt # 1).

2 The claim is that plaintiff was denied access to court during his criminal trial because of the  
3 alleged inadequacies of the Mason County Jail law library.

4 Plaintiff indicates that he is without his legal materials as a result of his transfer to prison  
5 and placement in the Intensive Management Unit. Defendants are **ORDERED** to take steps to  
6 ensure plaintiff has the following documents:

- 7
- 8 1. A copy of the complaint in this action.
  - 9 2. A copy of the answer.
  - 10 3. A copy of the currently pending motion for summary judgment with all  
11 attachments.

12 Defendants may send the documents and file a copy of the documents sent with an  
13 affidavit of service by mail, or if they prefer they may have someone personally serve the  
14 documents on plaintiff and file an affidavit stating with specificity what documents were  
15 personally served. Service of these papers and the filing of proof of service should occur as  
16 soon as possible.

17 The defendant's motion for summary judgment (Dkt. # 6) is re-noted for March 19, 2010.  
18 Plaintiff's response is due on or before March 12, 2010. Any reply defendants wish to file must  
19 be received on or before March 19, 2010.

20 The Clerk's office is directed to remove Dkt. #12, 13, and 14 from the court's calendar  
21 and re-note Dkt. #6 for March 19, 2010.

22 DATED this 2<sup>nd</sup> day of February, 2010.

23  
24  
25   
26 J. Richard Creatura  
United States Magistrate Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

ORDER- 4